

**TOWN OF NARRAGANSETT  
ENGINEERING DEPARTMENT  
DEPARTMENT OF PUBLIC WORKS**

**REQUEST FOR PROPOSALS**

**Water Storage Tanks Interior Inspection &  
Cleaning**

Narragansett, Rhode Island



Jeffry Ceasrine, P.E.  
Town Engineer

**Bid Date: October 23, 2014 @ 11:00 AM**

## TABLE OF CONTENTS

### Contents

INVITATION TO BID . . . . .	1
STANDARD INSTRUCTIONS TO BIDDERS . . . . .	2
SCOPE OF WORK . . . . .	6
CONTRACT AGREEMENT . . . . .	9
BID FORM . . . . .	11
EXPERIENCE . . . . .	13
PROPOSED SUBCONTRACTORS . . . . .	14
NOTICE OF AWARD . . . . .	15
NOTICE TO PROCEED . . . . .	17
GENERAL CONDITIONS . . . . .	18
Appendix A . . . . .	66

## INVITATION TO BID

Separate sealed bids will be received by the **TOWN OF NARRAGANSETT, RHODE ISLAND** for **WATER STORAGE TANKS INTERIOR INSPECTION AND CLEANING** on or before **11:00 a.m.** on **Thursday, October 23, 2014** at the office of the Purchasing Agent, 25 Fifth Avenue, Narragansett, RI and at that time will be opened and read in public.

Specifications may be obtained at the Purchasing Office, 25 Fifth Avenue, Narragansett, Rhode Island between the hours of 8:30 a.m. and 4:30 p.m. **Monday through Friday** and are available on the Town of Narragansett website, [www.narragansettri.gov](http://www.narragansettri.gov).

All bids must be submitted on the bid form provided, in duplicate and clearly marked:

(Sealed Bid)

### **WATER STORAGE TANKS INTERIOR INSPECTION AND CLEANING**

Bids must be enclosed in an opaque envelope addressed to "Purchasing Agent, Town Hall, 25 Fifth Avenue, Narragansett, Rhode Island 02882-3699" bearing the name and address of the bidder.

No bidder may withdraw his/her bid within ninety (90) days after the scheduled closing time for receipt of bid.

The Town of Narragansett reserves the right to reject any/all bids, waive any informalities in the bids received and to accept and award the bid to the lowest qualified bid deemed most favorable to the interest of the Town of Narragansett.

Individuals requesting interpreter services for the hearing impaired must notify the Finance Department (401)782-0644 three business days prior to the bid opening.

Susan W. Gallagher  
Purchasing Agent

## **STANDARD INSTRUCTIONS TO BIDDERS**

### **DEPARTMENT OF FINANCE-PURCHASING DIVISION**

#### **TOWN OF NARRAGANSETT, RHODE ISLAND**

**THESE INSTRUCTIONS ARE STANDARD FOR ALL PROPOSALS ISSUED BY THE PURCHASING DIVISION AND MAY BE DELETED, OR MODIFIED BY INDICATING SUCH CHANGE BY "SPECIAL INSTRUCTIONS TO BIDDERS."**

1. Receipt and Opening of Proposal

Sealed proposals (bids) will be accepted in the office of the Purchasing Agent, Town of Narragansett, R.I. until the time indicated on the advertisement for Bids, for the commodities, equipment or services designated in the specifications and will then be publicly opened and read.

2. Form of Bid

Proposal must be submitted on and in accordance with the forms attached hereto, blank places must be filled in as noted, no change shall be made in the phraseology of the proposal or in the item or items mentioned therein, must contain the name and proper address of the bidding firm, and must be signed by a responsible member of the firm with his/her signature and official title. Proposals that are not complete, or contain any omissions, erasures, alterations, additions or contain irregularities of any kind, may be rejected.

3. Submission of Bids

- a. Envelopes containing bids must be sealed and addressed to the office of the Purchasing Agent, Town Hall, Narragansett, R.I. 02882 and must be marked with the name and address of bidder, date and hour of opening, and name of item in bid call.
- b. The Purchasing Agent will decide when the specified time has arrived to open bids, and no bid received thereafter will be considered.
- c. Any bidder may withdraw his/her bid by written request at any time prior to the advertised time for opening. Telephonic bids, amendments, or withdrawals will not be accepted.
- d. Unless otherwise specified, no bid may be withdrawn for a period of ninety (90) days from the date of bid opening.

- e. Negligence on the part of the bidder in preparing the bid confers no rights for the withdrawal of the bid after it has been opened.
- f. Proposals received prior to the time of opening will be securely kept unopened. No responsibility will attach to an officer or person for the premature opening of a proposal not properly addressed and identified.
- g. All bids or proposals that exceed \$500,000 must include an additional copy (beyond the number of copies specified in the Invitation to Bid, Bid Form, or elsewhere within these Contract Documents), submitted by the Bidder, which will be made available for public inspection pursuant to RIGL 37-2-18(j).

4. Prices

Bidders shall state the proposed price in the manner as designated in the Bid Proposal Form. In the event that there is a discrepancy between the unit prices and the extended totals, the unit prices shall govern. In the event there is a discrepancy between the price written in words and written in figures, the prices written in words shall govern.

5. Terms

Cash discounts offered will be considered in determining awards. The discount period shall be computed from the date of delivery or from the correct invoice as received by Town Treasurer, whichever date is later. The date of delivery shall be construed to mean the date on which bid item is determined to meet the specifications and is therefore acceptable. Discounts for a period less than thirty (30) days may not be considered.

6. Rhode Island Sales Tax

The Town is exempt from the payment of R.I. Sales Tax under the 1956 General Laws of the State of Rhode Island, 44-18-30 Para..1, as amended.

7. Federal Excise Taxes

The Town is exempt from the payment of any excise or federal transportation taxes. The price bid must be exclusive of taxes and will be so construed.

8. "Or Equal" Bidding

When the name of a manufacturer, a brand name, or manufacturer's catalogue number is issued as the bid standard in describing an item followed by "Or Equal" this description is used to indicate quality, performance and other essential characteristics of the article required.

If bidding on other than the make, model, brand or sample specified, but equal thereto, bidder must so state by giving the manufacturer's name, catalogue number and any other information necessary to prove that the intended substitution of a commodity is equal in all essential respects to the bid standard. Bidder must prove to the satisfaction of the Town Manager or by person or persons designated by him, that his/her designated substitute is equal to the bid standard: otherwise, his/her bid will be declared "No Bid" insofar as the item in question is concerned.

9. Award and Contract

Unless otherwise specified, the Town reserves the right to make award by item or items, or by total, as may be in the best interest of the Town. A written award (or acceptance of Bid) mailed (or otherwise furnished) to the successful bidder followed by a Town Purchase Order shall, unless otherwise specified, be deemed to result in a binding contract without further action by either party.

10. Delivery

All prices must be on the basis of F.O.B. Delivery Point Narragansett, Rhode Island. The bid prices must include delivery and shipping to the Town. No additional shipping, handling, or fuel surcharge costs will be honored by the Town. Deliveries must consist only of new merchandise or equipment (unless otherwise specified) and shall be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. No delivery shall become due or be acceptable without a written Purchase Order issued by the Town Purchasing Agent.

11. Equal Employment Opportunity Policy Statement

For the purposes of this Policy, the term "vendor" shall mean any and all individuals, companies, corporations, and business entities that provide goods or services to the Town of Narragansett pursuant to any and all relevant and appropriate Federal, State, and local purchasing rules, regulations, and procedures.

The Town of Narragansett is committed to the general policy and principle of Equal Employment Opportunity in terms of retaining vendors to provide the Town with goods and services necessary for routine and emergency operations. The Town will not discriminate against vendors as entities, or individual employees thereof on any legally-recognized basis included, but not limited to, race, age, color, religion, sex, marital status, national origin, physical or mental disability, Veteran's status, pregnancy, sexual orientation, genetic conditions, predisposition to certain diseases, or ancestry, except where a bona fide occupational qualification exists.

12. Towns Right to Reject

The Town reserves the right to reject any and all proposals, to waive any informality in the proposals received and to accept the proposal deemed to be most favorable to the best interests of the Town.

## **SCOPE OF WORK**

- I. General – The Town of Narragansett owns and operates three drinking water storage tanks. The storage tanks are described as follows:
- A. The “North End Tank” is a 500,000 gallon steel standpipe tank located at 1170 Boston Neck Road;
  - B. The “Kinney Avenue Tank” is a 750,000 gallon steel hydrosphere tank located at 1 Old Point Judith Road;
  - C. The “Point Judith Tank” is a 750,000 gallon hydrosphere tank located at 1075 Point Judith Road.

See Appendix A for location sketches for all tanks. It is anticipated that all tanks will be completely filled with water, but not in service during inspection and/or cleaning operations.

- II. Description – For all three water storage tanks described above, the Contractor shall provide the following services. Note that all work performed shall be in strict accordance with all current applicable AWWA standards and specifications:
- A. Comprehensive Water Tank Interior Inspection – The entire tank interior shall be inspected, including but not limited to tank floor, walls, all piping and appurtenances, condition of all interior coatings, and sediment accumulations. All inspection items shall be documented in an inspection report. The report shall include photographs of all relevant items inspected. Digital video documentation shall also be provided (in a format to be approved by the Town). Photographs and video documentation shall be prepared and reported in accordance with typical water tank inspection documentation protocols. Inspections procedures shall utilize techniques that minimize disturbance of sediments.
  - B. Water Tank Interior Cleaning – All tank interiors shall be cleaned and shall include but not limited to tank floor and all horizontal surfaces including ledges and all other interior tank appurtenances and areas exhibiting sediment accumulation. The Town will specify sediment discharge area within 400 feet of each storage tank. The Contractor shall provide flexible discharge hose of sufficient length to reach the specified discharge location. Cleaning shall employ techniques that minimize disturbance of sediments prior to their removal.
  - C. Chlorination – Subsequent to inspection and cleaning operations, the Contractor shall perform a one-time dispersal of chlorine to the tank interior at a location in the tank to be specified by the Town. The Town will provide all chlorine.
  - D. Report – The Contractor shall prepare three reports (one for each of the three water storage tanks) that documents the inspection and cleaning of the tanks. The reports shall document and describe all observed inspection and cleaning items of relevance as well as all observed tank discrepancies and major maintenance issues. The report shall include a narrative description and photo of each discrepancy / issue observed. For each deficiency observed, the report shall



- include a brief recommendation of remedial action that should be taken. The Contractor shall include a minimum of 20 photographs in each report.
- E. Equipment and Materials – The Contractor shall furnish all necessary equipment and materials required to perform all work. All equipment and materials shall be specifically manufactured or intended for the work described herein. All equipment to be used in the tank interior shall be sanitized immediately prior to use.
- F. Proposal – Prospective Contractors shall provide a written description of all proposed services, equipment, materials, methodologies, and standards in their proposal.
- III. Reference Regulations and Standards – All work shall be done in accordance with all applicable standards and regulations of all regulatory agencies having authority of the work to be performed. In addition, all work shall be performed in strict conformance with the applicable standard of the American Water Works Association.
- IV. Contractor Licensing and Experience Requirements –
- A. All diving operations shall be conducted and supervised by a certified commercial diver;
- B. The Contractor shall have a minimum of five (5) years experience in the providing of services to inspect and clean municipal water storage tanks.
- C. Prospective bidders shall include resumes of all project personnel in their proposal.
- V. Safety and Health Requirements - -The Contractor shall conform to all applicable health and safety regulations for all work. Proposals shall include a narrative describing health and safety practices and standards, including but not limited to OSHA regulations.
- VI. Existing Conditions – Prospective Contractors shall familiarize him/herself with the existing conditions at each tank site. There will be no pre-bid meeting.
- VII. Use of the Site – The Contractor shall coordinate his/her use of the site with the owner prior to commencing work. Only areas designated and approved for use by the Town shall be used by the Contractor. The Contractor's use of the site shall not interfere with the Owner's operations without prior agreement. The Contractor will be required to coordinate with the Town of Narragansett Water Superintendent prior to commencing work to arrange for access and security requirements for the work areas. The Contractor shall continually on a daily basis for the duration of the work coordinate with the Superintendent.
- VIII. Temporary Facilities –
- A. Electricity – The Contractor may use the existing electrical service at each site provided that the Contractor's electrical equipment is compatible with the electrical service available, and that the Contractor's use of the existing

electrical service does not interfere with the Owner's electrical usage. All electrical equipment that may be used by the Contractor shall not exceed the allowable loading of the available circuit.

B. Water – The Contractor may use existing domestic water supply.

C. Sanitary Facilities – The Contractor may use onsite sanitary facilities as needed.

D. Other – Telephone, auxiliary heat, and other required facilities shall be provided by the Contractor

IX. Pre-Construction Meeting – After signing the Contract Agreement and before commencing work, the Contractor shall attend a Pre-Construction meeting with the Owner to discuss the use of the site, progress / sequencing of the work, and other issues relating to commencing work.

X. Cleanup – The Contractor shall maintain and leave each site and the project area in a neat and orderly manner at the end of each working day and shall every day remove trash and debris and legally dispose of such. At the completion of the Contract, all tools, scraps, and debris shall be removed from the site. Any disturbances each site shall be repaired such that the site is in the same condition as prior to commencement of operations.

XI. Protection – The Contractor shall take all necessary steps to protect the existing facilities and areas of operation from dust, dirt, marring, or other damage. All damage caused by the Contractor shall be cleaned and/or repaired by the Contractor at no additional expense to the Owner.

XII. Final Inspection – All work including the report is subject to review and approval by the Town prior to the Town's final payment to the Contractor. All work shall be satisfactorily completed and shall be subject to the Town's inspection prior to acceptance. The Town may issue a 'punch list' of items requiring correction or completion prior to the Town's acceptance of the work. The 'punch list' may also include work that the Town considers incomplete or unsatisfactory. The Contractor shall make any such corrections to the work and address all 'punch list' items at no additional expense to the Owner prior to the Owner's acceptance of the work.

## **CONTRACT AGREEMENT**

THIS AGREEMENT, made and executed this \_\_\_\_\_ day of \_\_\_\_\_, in the year Two Thousand and Twelve (2014), by and between the Town of Narragansett, a municipality located within the State of Rhode Island, by its Town Council duly constituted, and without personal liability for the individuals signatory hereto, herein termed the OWNER, party of the first part, and of \_\_\_\_\_, doing business as a corporation.

Hereinafter termed the CONTRACTOR, party of the second part;

WITNESSETH: That the parties to this Agreement each in consideration of the Agreements on the part of the other herein contained have agreed, and by these presents do hereby agree, the OWNER for itself, and the CONTRACTOR for himself/herself and his/her heirs, executors, administrators, successors, and assigns, as follows:

That the Contract Documents consisting of this Agreement, together with the Legal and Procedural Documents, General and Supplemental Conditions, Detailed Specification Requirements, Contract Drawings, and any Addenda issued before execution of the Agreement, for the Contract;

That the CONTRACTOR has informed himself/herself fully in regard to all conditions pertaining to the place where the Work is to be done and other circumstances affecting the Work;

That the CONTRACTOR has obtained all the information he/she needs to enable him/her to estimate fully and fairly the costs of the Work herein contemplated;

That the CONTRACTOR shall furnish all plant, labor, materials, suppliers, tools, equipment, and other facilities and things necessary or proper for or incidental to, the party of the first part in accordance with this Contract, commencing Work within the time interval stated in the Bid Proposal, provided he/she shall have been notified by the OWNER so to do, and completing everything required of him/her under this Contract not later than the time stated in the Bid Proposal.

That the OWNER shall pay and the CONTRACTOR shall receive, as full compensation for fulfilling everything required of the CONTRACTOR under this Contract, the unit prices and lump sums recorded in the Bid Form of the Proposal.

That the quantities shown in the Bid Proposal or Bid Form are approximate only, and are solely for the purpose of facilitating the comparison of Proposals; that the OWNER shall not be held responsible if these quantities are not even approximately correct; that for all Work upon which unit prices and lump sums are quoted, the CONTRACTOR'S

compensation shall be computed upon the Work actually performed, measured by the units of measurement specified, whether greater or less than the quantities shown in the Bid Proposal or Bid Form; and that the unit prices and lump sums set against the several items cover all incidental services required of the CONTRACTOR under the Contract.

That the CONTRACTOR shall give to the OWNER, as liquidated damages, for each day lost by the CONTRACTOR in the completion of the Work of the Contract after the time herein stipulated, the sum of One Thousand Dollars (\$1,000.00) per day;

That the Contract Drawings are prints as listed in the Specifications, and that an official set, in which each print is marked Water System Improvements (Chlorine Injector & Analyzer System), has been received by each of the parties hereto.

Signed, sealed and delivered in quadruplicate the day and year first above written.

OWNER:

Town of Narragansett, Rhode Island

By: \_\_\_\_\_  
Pamela T. Nolan, Town Manager

CONTRACTOR:

\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

This Contract and the applicable Certificates of Insurance are satisfactory to the Town of Narragansett, Rhode Island.

By: \_\_\_\_\_  
Mark A. McSally, Town Solicitor

Town Council Agenda Item / Date

**BID FORM**

Pursuant to and in compliance with the INVITATION TO BID, and the INSTRUCTIONS TO BIDDERS relating thereto, the undersigned bidder hereby states that they have carefully examined the **CONTRACT DOCUMENTS** and the party understands the provisions, requirement, terms and conditions thereof, all of which are acknowledged to be part of the **Bid Proposal**.

Further, they have become familiar with local conditions and the extent of work: has determined the required quality, quantity and sources of supply of all plant, equipment, materials, tools, supplies, labor and all other facilities and things necessary or proper or incidental to the continuous execution and completion of the work as required: and hereby agrees to perform the contract in strict accordance with the **CONTRACT DOCUMENTS**.

**The undersigned bidder hereby agrees that the bid proposal submitted shall remain in effect and binding upon the bidder for a period of 90 calendar days, from the date and time bids are received.**

The undersigned bidder declares that his/her bid proposal in all respects is fair and made without collusion with any other person, firm, corporation making a proposal for this work.

Item #	Description	Quantity	Unit Price	Total
1	Inspect and Clean three (3) water storage tank interiors			
		1 EA	\$_____/LS*	\$ _____

Price in Words: \_\_\_\_\_ /LS

**\* LS = Lump Sum**

TOTAL BASE BID PRICE (Item number 1):

\_\_\_\_\_  
(figures)

\_\_\_\_\_  
(written)

BUSINESS NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

SIGNED: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

PHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

FIN: \_\_\_\_\_

### **EXPERIENCE**

The following experience sheet shall be completed by each Bidder. Any Bid submitted without a fully completed Experience Sheet will be rejected by the OWNER. The Contractor may attach supplemental statement of experience sheets at his/her option.

1. Have you ever failed to complete any work awarded to you?  
If so, state where and why.
  
2. What projects similar to this one has your organization completed within the last five (5) years?

Class of Address of Work	Contract Amount	Owner	When Completed	Name & Engineer or
(1)	(2)		(3)	(4)

**PROPOSED SUBCONTRACTORS**

THE BIDDER SHALL STATE THE NAMES OF ALL THE SUBCONTRACTORS  
THAT HE/SHE PROPOSES TO USE

If none, write

“None” \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\*Description of Work \_\_\_\_\_

Proposed Subcontractor, Name: \_\_\_\_\_

Address: \_\_\_\_\_

\*Description of Work \_\_\_\_\_

Proposed Subcontractor, Name: \_\_\_\_\_

Address: \_\_\_\_\_

\*Insert description of Work and subcontractors' names as may be required.

This is to certify that all names of the above-mentioned subcontractors are submitted with full knowledge and consent of the respective parties.

The Bidder warrants that none of the proposed subcontractors have any conflict of interest in respect to this Contract.

BIDDER BUSINESS NAME: \_\_\_\_\_

SIGNED: \_\_\_\_\_

TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

DATE: \_\_\_\_\_



**NOTICE OF AWARD**

TO: \_\_\_\_\_

**PROJECT DESCRIPTION: Water Storage Tanks Interior Inspection & Cleaning**

The OWNER has considered the BID submitted by you dated \_\_\_\_\_  
for the above-referenced WORK in response to its Invitation to Bid and the Standard &  
Special Instructions to Bidders.

You are hereby notified that your BID has been accepted for items in the amounts shown  
in the Bid Schedule.

You are required by the Standard & Special Instructions to Bidders to execute the  
Agreement and furnish the required CONTRACTOR'S PERFORMANCE BOND,  
LABOR AND MATERIAL PAYMENT BOND, and Certificates Of Insurance within  
fifteen (15) calendar days from the date of this NOTICE to you. The bond forms  
contained within the Contract Documents must be used. Substitute bond forms will not  
be accepted.

If you fail to execute said Agreement and to furnish said BONDS and CERTIFICATES  
OF INSURANCE within fifteen (15) days from the date of this NOTICE, said OWNER  
will be entitled to consider all your rights arising out of the OWNER'S acceptance of  
your BID as abandoned, and as a forfeiture of your BID BOND. The OWNER will be  
entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the  
OWNER.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**TOWN OF NARRAGANSETT, RHODE ISLAND**  
**OWNER**

BY: Jeffrey Ceasrine, P.E., Town Engineer

Agenda Item # \_\_\_\_\_ Date: \_\_\_\_\_

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by

\_\_\_\_\_  
(Company Name)

this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

NOTICE TO PROCEED

DATE: \_\_\_\_\_

TO: \_\_\_\_\_

PROJECT: ***Water Storage Tanks Interior Inspection & Cleaning***

You are hereby notified to commence WORK in accordance with the Bid Proposal dated \_\_\_\_\_, on or before \_\_\_\_\_ and you are to complete the WORK within \_\_\_\_\_ consecutive calendar days thereafter. The date of completion of all WORK is therefore \_\_\_\_\_

TOWN OF NARRAGANSETT, RHODE ISLAND  
OWNER

BY: Jeffrey Ceasrine, P.E  
TITLE: Town Engineer

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is  
hereby acknowledged by (name of Bidder)

this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**GENERAL CONDITIONS**

## **INDEX TO GENERAL CONDITIONS**

### **PART I:**

1. .... CONTRACT AND CONTRACT DOCUMENTS
2. .... DEFINITIONS
3. .... QUANTITIES OF ESTIMATE
4. .... CONFLICTING CONDITIONS
5. .... PROVISIONS OF LAW DEEMED INSERTED
6. .... NOTICE AND SERVICE THEREOF
7. .... GRATUITIES
8. .... COVENANT AGAINST CONTINGENT FEES
9. .... REMEDIES

### **PART II:**

10. .... REPRESENTATIONS OF THE CONTRACTOR
11. .... CONTRACTOR'S OBLIGATIONS
12. .... TIME FOR COMPLETION AND LIQUIDATED DAMAGES
13. .... TERMINATION FOR DEFAULT, DAMAGES FOR DELAY,  
TIME EXTENSIONS
14. .... CONTRACT SECURITY
15. .... ADDITIONAL OR SUBSTITUTE BOND
16. .... INDEMNITY
17. .... SUPERINTENDENCE BY THE CONTRACTOR
18. .... CONTRACTOR TO LAY OUT HIS OWN WORK
19. .... PERMITS AND REGULATIONS
20. .... CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES
21. .... SEQUENCE OF THE WORK
22. .... AUDIT; ACCESS TO RECORDS
23. .... REPORTS, RECORDS, AND DATA
24. .... DIFFERING SITE CONDITIONS
25. .... GENERAL GUARANTEE

- 26. .... COMPLETENESS OF THE WORK
- 27. .... CARE OF THE WORK
- 28. .... PROTECTION OF CONSTRUCTION FEATURES
- 29. .... SAFETY AND HEALTH REGULATIONS
- 30. .... PROTECTION OF WORK AND PROPERTY EMERGENCY
- 31. .... FIRE PREVENTION AND PROTECTION
- 32. .... PROTECTION OF LIVES AND HEALTH
- 33. .... PROTECTION AGAINST HIGHWATER AND STORM
- 34. .... FIRST AID TO INJURED
- 35. .... HURRICANE PROTECTION
- 36. .... USES OF PREMISES AND REMOVAL OF DEBRIS
- 37. .... CORRECTION OF WORK
- 38. .... FAILURE TO REPAIR
- 39. .... WEATHER CONDITIONS
- 40. .... BUS LINE INTERFERENCE
- 41. .... AFTER HOURS WORK
- 42. .... LIGHTS, BARRIERS, WATCHMEN AND INDEMNITY
- 43. .... LOADING
- 44. .... DISPOSAL OF MATERIALS
- 45. .... FINISHING AND CLEANING UP
- 46. .... SPIRITUOUS LIQUORS
- 47. .... DUST CONTROL

**PART III:**

- 48. .... THE OWNER'S AUTHORITY
- 49. .... ALL WORK SUBJECT TO CONTROL BY THE OWNER
- 50. .... THE OWNER'S CONTROL NOT LIMITED
- 51. .... RIGHT OF THE OWNER TO TERMINATE THE CONTRACT
- 52. .... TERMINATION FOR CONVENIENCE
- 53. .... RIGHTS OF ACCESS
- 54. .... RIGHTS-OF-WAY AND SUSPENSION OF WORK

- 55. .... CONFORMANCE WITH DIRECTIONS
- 56. .... INTERPRETATION OF THE DRAWINGS AND SPECIFICATIONS
- 57. .... SUSPENSION OF WORK
- 58. .... INSPECTION

PART IV:

- 59. .... SUBCONTRACTORS
- 60. .... MUTUAL RESPONSIBILITY OF CONTRACTORS
- 61. .... ASSIGNMENTS
- 62. .... SEPARATE CONTRACTS
- 63. .... WORK BY OTHERS

PART V:

- 64. .... WAGE UNDERPAYMENTS AND ADJUSTMENTS
- 65. .... PAYMENT OF EMPLOYEES
- 66. .... NON-DISCRIMINATION IN EMPLOYMENT
- 67. .... APPRENTICES

PART VI:

- 68. .... SHOP OR SETTING DRAWINGS
- 69. .... WORK TO BE ACCOMPLISHED IN ACCORDANCE WITH THE DRAWINGS AND SPECIFICATIONS
- 70. .... CONTRACTOR TO CHECK DIMENSIONS AND SCHEDULES
- 71. .... ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS
- 72. .... MATERIALS, SERVICES, AND FACILITIES
- 73. .... CONTRACTOR'S TITLE TO MATERIALS
- 74. .... INSPECTION AND TESTING OF MATERIALS
- 75. .... DEFECTIVE MATERIALS
- 76. .... PATENTS
- 77. .... "OR APPROVED EQUAL" CLAUSE

PART VII:

78. .... INSURANCES

PART VIII:

79. .... COMPENSATION TO BE PAID TO THE CONTRACTOR

80. .... PAYMENTS TO CONTRACTOR

81. .... CHANGE ORDERS

82. .... CHANGES IN THE WORK

83. .... CLAIMS FOR EXTRA COST

84. .... CHANGES AND MODIFICATIONS

85. .... DEDUCTION FOR UNACCEPTED WORK

86. .... CORRECTION OF WORK BEFORE FINAL PAYMENT

87. .... ACCEPTANCE OF THE FINAL PAYMENT CONSTITUTES

RELEASE

88. .... FEDERAL DRUG AND ALCOHOL TESTING PROGRAM



## **PART I**

### **ARTICLE 1: CONTRACT AND CONTRACT DOCUMENTS**

The Drawings, Specifications, and addenda enumerated in Article 1 of the Special Conditions, the Invitation To Bid, the Standard Instructions To Bidders, the Special Instructions To Bidders, and the Bid Proposal as accepted by the OWNER, shall be binding upon the parties to this Agreement as if fully set forth therein. Whenever the terms "Contract Documents" are used, it shall mean and include this Contract, Special Conditions, General Conditions, the Standard Instructions To Bidders, the Special Instructions To Bidders, the Bid Proposal, Addenda, the Technical Specifications and the Drawings. The OWNER shall interpret his own requirements. In case of conflict or inconsistency between the provisions of the signed portions of the Contract Documents and those of the Specifications, the provision of the signed portions shall govern.

Everything necessary for the proper completion of the work and successful operation thereof, even though neither definitely shown on the plan or mentioned in the specifications, shall be furnished in a manner corresponding with the rest of the work without extra charge. This is intended to refer to the smaller details necessary for a workmanlike job, and not usually specified or indicated on the drawings.

### **ARTICLE 2: DEFINITIONS**

The following terms as used in this Contract are defined as follows:

- a. **CHANGE ORDER** - A written order to the CONTRACTOR authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time.
- b. **CONTRACT DOCUMENTS** - The Contract, including Advertisement For Bids, Information For Bidders, Bid, Bid Bond, Agreement, Payment Bond, Performance Bond, General Conditions, Special Conditions, Technical Specifications, Notice Of Award, Notice To Proceed, Change Order, Drawings, and Addenda.
- c. **CONTRACTOR** - A person, firm, or corporation with whom the Contract is made by the OWNER.
- d. **DRAWINGS** - The part of the Contract Documents which show the characteristics and scope of the Work to be performed, and which have been prepared by the Engineer.
- e. **ENGINEER** - Shall mean for the purpose of this Contract the party who shall act as the authorized representative of the OWNER whenever reference is made for

such authorization.

- f. FIELD ORDER - A written order effecting a change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Engineer to the CONTRACTOR during construction.
- g. NOTICE OF AWARD - The written notice of the acceptance of the Bid from the OWNER to the successful Bidder.
- h. NOTICE TO PROCEED - Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the Work and establishing the date of commencement of the Work.
- i. OWNER - Shall mean, for the purpose of this Contract, the party defined in the Agreement section of the Contract Documents.
- j. RESIDENT PROJECT REPRESENTATIVE - The authorized representative of the OWNER who is assigned to the Project Site or any part thereof.
- k. SHOP DRAWINGS - All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the CONTRACTOR, a Subcontractor, Manufacturer, Supplier or Distributor, which illustrates how specific portions of the Work shall be fabricated or installed.
- l. SPECIFICATIONS (TECHNICAL SPECIFICATIONS) - A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- m. SUBCONTRACTOR - A person, firm, or corporation supplying labor and materials, or only labor, for Work at the site of the Project; for, and under a separate Contract or Agreement with the CONTRACTOR.
- n. SUBSTANTIAL COMPLETION - That date as certified by the Engineer when the construction of the Project or the specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purpose for which it is intended.
- o. WORK ON THE PROJECT - Work to be performed at the location of the Project, including the transportation of materials and supplies to or from the site by employees of the CONTRACTOR or any Subcontractor.

### ARTICLE 3: QUANTITIES OF ESTIMATE

Whenever the estimated quantities of Work to be done and materials to be furnished under this Contract are shown in any of the documents including the Bid Proposal, they are given for use in comparing bids and the right is especially reserved by the OWNER to

increase or diminish them as may be deemed necessary or desirable by the OWNER. Such increases or decreases shall in no way affect this Contract, nor shall any such increases or decreases give cause for claims or liabilities for damages.

#### ARTICLE 4: CONFLICTING CONDITIONS

Any provisions of these General Conditions which may be in conflict or inconsistent with any of the articles in the Special Conditions shall be void to the extent of such conflict or inconsistency.

#### ARTICLE 5: PROVISION OF LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, the Contract shall forthwith be physically amended to make such insertion or correction.

#### ARTICLE 6: NOTICE AND SERVICE THEREOF

The service of any notice, letter, or other communication shall be deemed to have been made by one of the contracting parties on the other party to the Contract when such letter, notice, or other communication has been delivered to the legal office address of the addressee, by a duly authorized representative of the addresser in person, or when such letter, notice, or other communication has been deposited in any regularly maintained mailbox of the United States Post Office, in a properly addressed, postpaid wrapper. The date of such service shall be considered to be the date of such personal delivery or mailing.

The address of the CONTRACTOR noted in his bid and/or the address of his field office on or near the site of Work shall be considered his legal address for the purposes as set forth above.

#### ARTICLE 7: GRATUITIES

- a. If it is found, after notice and hearing, by the OWNER that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the CONTRACTOR, or any agent or representative of the CONTRACTOR, to any official, employee, or agent of the OWNER, or of the State, with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this Contract, the OWNER, may by written notice to the CONTRACTOR, terminate the right of the CONTRACTOR to proceed under this Contract or may pursue each other's rights and remedies provided by law or under this Contract: provided, that the existence of the facts upon which the OWNER makes such findings shall be in issue and may be reviewed in proceedings pursuant to the

"Remedies" Clause of this Contract.

- b. In the event this Contract is terminated as provided in Paragraph (a) hereof, the OWNER shall be entitled (1) to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the Contract by the CONTRACTOR, and (a) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the OWNER) which shall be not less than three (3) nor more than ten (10) times the cost incurred by the CONTRACTOR in providing any such gratuities to any such officer or employee.

#### ARTICLE 8: COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, the OWNER shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract Price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### ARTICLE 9: REMEDIES

Except as may be otherwise provided in this Contract, all claims, counterclaims, disputes and other matters in question between the OWNER and the CONTRACTOR arising out of or relating to this agreement or the breach thereof will be decided in a court of competent jurisdiction within the State in which the OWNER is located.

## **PART II**

The rights and obligations of the CONTRACTOR under this Contract shall include, but not be limited to the following:

### **ARTICLE 10: REPRESENTATIONS OF THE CONTRACTOR**

The CONTRACTOR represents and warrants:

- a. That he is financially solvent and that he is experienced and competent to perform the type of Work required under this Contract and that he is able to furnish the plant materials, supplies, or equipment that may be necessary to perform the Work as specified.
- b. That he is familiar with all Federal, State and municipal laws, ordinances, orders, and regulations which may in any way affect the Project Work, or the employment of persons thereon, including but not limited to any special acts relating to the Work or to the Project of which he is a part.
- c. That such temporary and permanent Work required by the Contract Documents to be done by him will be satisfactorily constructed and can be used for the purpose for which it was intended and that such construction will not injure any person or damage property.
- d. That he has carefully examined the Drawings, Specifications, and Addenda, if any, and the site of the Work and that from his own investigations, he has satisfied himself as to the nature and location of the Work, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other items that may affect the Work.
- e. That he is aware of the hazards involved in the Work and the danger to life and property both evident and inherent and that he will conduct the Work in a careful and safe manner without injury to persons or property.

### **ARTICLE 11: CONTRACTOR'S OBLIGATIONS**

The CONTRACTOR shall perform all Work in a good workmanlike manner, and in accordance with the plans and Specifications and any supplements thereto, and according to any directions or orders given by the OWNER. He shall furnish all supplies, materials, facilities, equipment, and means necessary or proper to perform and complete the Work required by this Contract. Unless otherwise specified, all materials incorporated in the permanent work shall be new, and both workmanship and materials shall be of good quality. The CONTRACTOR, if required, shall furnish satisfactory evidence as to the kind and quality of materials. He shall furnish, erect, maintain, and remove any construction plant or temporary Work as may be required. He alone shall be responsible

for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation. The CONTRACTOR shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and Specifications and shall do, carry on, and complete the entire Work to the satisfaction of the OWNER.

The CONTRACTOR shall be solely responsible for all the Work and shall provide all precautionary measures necessary for preventing injury to persons or damage to property. All injury or damage of whatever nature resulting from the Work or resulting to persons, property, or the Work during its progress, from whatever cause, shall be the responsibility of the CONTRACTOR.

The CONTRACTOR shall hold the OWNER and Engineer, or their duly authorized agents, harmless and defend and indemnify them against damages or claims for damages due to injuries to persons or property arising out of the execution of the Project Work, and for damages to materials furnished for the Work, for infringement of inventions, patents, and patent rights used in doing the Work, and for any act, omission, or instance of neglect by the CONTRACTOR, his agents, employees, or subcontractors.

The CONTRACTOR shall bear all losses resulting to him, including but not limited to losses sustained on account of the character, quality, or quantity of any part of the Work, or all parts of the Work, or because the nature of the conditions in or on the Project site are different from what was estimated or indicated, or on account of the weather, elements, or other causes.

It shall be the General CONTRACTOR's responsibility to coordinate the work of any subcontractor he may engage and any manufacturer's representative used in installing equipment and to furnish any incidental equipment, connections, materials, and labor not furnished by such manufacturers, suppliers, subcontractors, etc., and perform all cutting and patching to make a completely finished, operable unit, structure or piece of equipment for its intended use and satisfactory to the OWNER.

The CONTRACTOR will cooperate in every way possible with the OWNER and with other contractors. Where new work adjoins old and making connections to existing systems, the CONTRACTOR shall consult with the OWNER and/or other contractors and shall perform such work in as short time as possible at times that will least interfere with normal operation.

#### ARTICLE 12: TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. It is hereby understood and mutually agreed by and between the CONTRACTOR and the OWNER that the date of beginning and the time of completion of the Work as specified in this Contract are ESSENTIAL CONDITIONS of this Contract, and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on a date to be specified in the Notice To Proceed.

- b. The CONTRACTOR agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified, and further, that time of completion as agreed upon is reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- c. If the said CONTRACTOR shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the OWNER, then the CONTRACTOR does hereby agree, as a partial consideration for the awarding of this Contract, to pay to the OWNER the amount specified in the Contract, not as a penalty, but as liquidated damages for such Breach of Contract as hereinafter set forth for each and every calendar day that the CONTRACTOR shall be in default, after the time stipulated in the Contract for completing the Work.
- d. The said amount is fixed and agreed upon by and between the OWNER and the CONTRACTOR, and said amount is agreed to be the amount of damages the OWNER would sustain in such an event as the above-mentioned, and said amount shall be retained from time to time by the OWNER for current periodical payments.
- e. It is further agreed that time is of the essence in each and every portion of the Contract and Specifications; where in a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall be by the CONTRACTOR and shall not be charged when the delay in completion of the Work is due to:
  - 1. Any preference, priority, or allocation order duly issued by the government, subsequent to the date of the Contract.
  - 2. Unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to acts of God, or of the public enemy, acts of the OWNER, acts of another contractor, fires, floods, epidemics, strikes, and unusually severe weather.
  - 3. Any delays of subcontractors or suppliers approved by the OWNER.

Provided further that the CONTRACTOR shall within ten (10) days from the beginning of the delay, unless the OWNER shall grant a further period of time prior to the date of final settlement of the Contract, notify the OWNER in writing of the causes of the delay. The OWNER shall ascertain the facts and extent of the delay, and notify the CONTRACTOR within a reasonable time of its decision in the matter.

ARTICLE 13: TERMINATION FOR DEFAULT; DAMAGES FOR DELAY; TIME  
EXTENSIONS

- a. If the CONTRACTOR refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said Work within such time, the OWNER may, by written notice to the CONTRACTOR, terminate his right to proceed with the Work or such part of the Work as to which there has been a delay. In such event, the OWNER may take over the Work and prosecute the same to completion, by Contract otherwise, and may take possession of and utilize in completing the Work such materials, appliances, and plant as may be on the site of the Work and necessary therefore. Whether or not the CONTRACTOR'S right to proceed with the Work is terminated, he and his sureties shall be liable for any damage to the OWNER resulting from his refusal or failure to complete the Work within the specified time.
- b. If fixed and agreed liquidated damages are provided in the Contract and if the OWNER so terminates the CONTRACTOR'S right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the Work together with any increased costs occasioned the OWNER in completing the Work.
- c. If fixed and agreed liquidated damages are provided in the Contract and if the OWNER does not so terminate the CONTRACTOR'S right to proceed, the resulting damage will consist of such liquidated damages until the Work is completed or accepted.
- d. The CONTRACTOR'S right to proceed shall not be so terminated nor the CONTRACTOR charged with resulting damage if:
  1. The delay in the completion of the Work arises from causes other than normal weather beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, acts of the public enemy, acts of the OWNER in either its sovereign or contractual capacity, acts of another contractor in the performance of a Contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from causes other than normal weather beyond the control and without the fault of negligence of both the CONTRACTOR and such subcontractors or suppliers; and
  2. The CONTRACTOR, within ten (10) days from the beginning of any such delay (unless the OWNER grants a further period of time before the date of final payment under the Contract), notifies the OWNER in writing of the causes of delay. The OWNER shall ascertain the facts and the extent



of the delay and extend the time for completing the Work when, in his judgment, the findings of fact justify such an extension and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Remedies" clause of this Contract.

- e. If, after notice of termination of the CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the OWNER, be the same as if the notice of termination has been issued pursuant to such clause. If, in the foregoing circumstances, this Contract does not contain a clause providing for termination for convenience of the OWNER, the Contract shall be equitably adjusted accordingly; failure to agree to any such adjustment shall be subject to the "Remedies" clause of this Contract.
- f. The rights and remedies of the OWNER provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- g. As used in paragraph (d) (1) of this clause, the term "Subcontractors or suppliers", means subcontractors or suppliers at any tier.

#### ARTICLE 14: CONTRACT SECURITY

The CONTRACTOR must furnish a Performance Bond and a Labor and Material Payment Bond, in the specific formats as attached herein, both for the full value of the bid price within fifteen (15) calendar days after the award date, in order to execute a Contract. This surety on such bonds shall be a duly authorized surety company satisfactory to the OWNER, and the cost of the same shall be paid by the CONTRACTOR. Prior to the starting of any Work, the bonds must be approved by the OWNER.

#### ARTICLE 15: ADDITIONAL OR SUBSTITUTE BOND

If at any time the OWNER, for justifiable cause, shall become dissatisfied with any Surety or Sureties holding payment bonds, the CONTRACTOR shall, within five (5) days after notice from the OWNER to do so, substitute an acceptable bond or bonds in such form and signed by such other Surety as may be satisfactory to the OWNER. The premiums of such bonds shall be paid by the CONTRACTOR. No further payments will be deemed due, nor will be made until the new Surety or Sureties shall have furnished such an acceptable bond to the OWNER.

#### ARTICLE 16: INDEMNITY

The CONTRACTOR shall at all times indemnify and save harmless the OWNER and the Engineer, their servants and agents, from any and all claims and from any suits, litigations, damages, losses or the like arising out of injuries sustained or alleged to have

been sustained by any persons or property in connection with the Contract Work, caused in whole or in part by acts or omissions of the CONTRACTOR, his subcontractors, materialmen, or anyone directly or indirectly connected with the Contract Work.

#### ARTICLE 17: SUPERINTENDENCE BY THE CONTRACTOR

The CONTRACTOR shall give the Work the constant attention necessary to facilitate the progress thereof and shall cooperate with the OWNER in every possible way.

At the site of the Work, the CONTRACTOR shall, at all times, employ a Construction Superintendent who shall have full authority to act for the CONTRACTOR. It is understood that the employment of such representative shall be acceptable to the OWNER and shall be such a person as can be continued in the capacity for the duration of the Contract, unless he ceases to be on the CONTRACTOR'S payroll.

The CONTRACTOR shall at all times enforce strict discipline and good order among his employees and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned to him. The CONTRACTOR shall employ experienced foremen, craftsmen, and other workmen competent in the Work in which they are to be engaged.

#### ARTICLE 18: CONTRACTOR TO LAY OUT HIS OWN WORK

The OWNER will establish such general reference points as in his judgment will enable the CONTRACTOR to proceed with the Work. The CONTRACTOR, at his own expense, shall provide all materials and equipment and such qualified helpers as may be required for setting the general reference points, lines, and grades, and shall protect and preserve all stakes, benches, and other markers used to identify the reference points. The CONTRACTOR shall lay out all the Contract Work from the above and shall be responsible for the accuracy of all lines, grades and measurements.

If the CONTRACTOR, in the course of the work, finds any discrepancy between the plans and the physical conditions of the locality, or any errors or omissions in plans or in the layout as given by survey points and instructions, he shall immediately inform the Engineer, in writing, and the Engineer shall promptly verify the same. Any work done after such discovery, until authorized, will be done at the CONTRACTOR's risk.

#### ARTICLE 19: PERMITS AND REGULATIONS

The CONTRACTOR shall comply with all laws, regulations, ordinances, orders and rules relating to the performance of the Work, the protection of the adjacent property, and the maintenance of passageways, guard fences, and other protective facilities.

It is the responsibility of the CONTRACTOR to secure, at his expense, all necessary permits and licenses for the required work.

## ARTICLE 20: CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

Within five (5) days after the date of "Notice To Proceed", the CONTRACTOR shall deliver to the OWNER an estimated construction progress schedule in a form satisfactory to the OWNER, showing the proposed dates of commencement and completion of each of the various subdivisions of Work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the CONTRACTOR in accordance with the progress schedule. The CONTRACTOR shall also furnish: 1) a detailed estimate, giving a complete breakdown of the Contract price; and 2) periodic itemized estimates of the Work done for the purpose of making partial payments thereon. This estimate shall be in the form of a monthly (or other agreed upon period) cash flow projection. It is understood that this report will not be binding on either the CONTRACTOR or the OWNER relative to actual requisition amounts submitted and approved, but will be used for planning purposes only.

The CONTRACTOR shall perform the Work of this Contract to conform with the schedule as approved by the OWNER, except that the OWNER reserves the right to amend and alter the construction schedule at any time, if in a manner which is deemed to be in the best interest of the OWNER to do so. The CONTRACTOR shall arrange his Work to conform with this schedule as it may be revised from time to time by the OWNER, at no additional expense to the OWNER. The CONTRACTOR shall notify the OWNER immediately of any circumstances which may affect the performance of the Work in accordance with the current construction schedule.

## ARTICLE 21: SEQUENCE OF THE WORK

The CONTRACTOR shall be required to prosecute his Work in accordance with a schedule prepared by him in advance in accordance with additional requirements specified herein and approved by the OWNER. This scheduling shall state the methods and shall forecast the times of doing each portion of the Work. Before beginning any portion of the Work, the CONTRACTOR shall give the OWNER advance notice and ample time for making necessary preparations.

## ARTICLE 22: AUDIT; ACCESS TO RECORDS

The CONTRACTOR shall maintain books, records, documents and other evidence directly pertinent to performance of Work under this Contract in accordance with generally accepted accounting principles and practices. The CONTRACTOR shall also maintain the financial information and data used by the CONTRACTOR in the preparation or support of the cost submission or for any negotiated Contract or Change Order and a copy of the cost summary submitted to the OWNER. The CONTRACTOR will provide proper facilities for such access and inspection.

Audits conducted pursuant to this Provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing

or audit agency(ies).

The CONTRACTOR agrees to the disclosure of all information and reports resulting from the access to records pursuant to paragraphs above, to any of the agencies referred to above, provided that the CONTRACTOR is afforded the opportunity for an audit conference, and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report that the final audit report will include written comments of reasonable length, if any, of the CONTRACTOR.

Records under paragraphs above, shall be maintained and made available during performance on Work under this Contract and until three (3) years from the date of final payment for the Project. In addition, those records which related to any "Dispute", appeal agreement, or litigation, or the settlement of claims arising out of such performance, or costs of items to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

#### ARTICLE 23: REPORTS, RECORDS, AND DATA

The CONTRACTOR and each of his subcontractors, shall submit to the OWNER such schedules of quantities and costs, progress schedules, certified payrolls, reports, estimates, records, and other data as the OWNER may request concerning the Work performed or to be performed under this Contract.

#### ARTICLE 24: DIFFERING SITE CONDITIONS

- a. The CONTRACTOR shall promptly and before such conditions are disturbed, notify the OWNER in writing of: (1) subsurface of latent physical conditions at the site differing materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in this Contract. The OWNER shall promptly investigate the conditions and if he finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR'S cost of, or the time required for, performance of any of the Work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.
- b. No claim of the CONTRACTOR under this clause shall be allowed unless the CONTRACTOR has given the notice required in (a) above; provided, however, the time prescribed therefore may be extended by the OWNER.
- c. No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

#### ARTICLE 25: GENERAL GUARANTEE

Neither the final certificate of payment nor any provision in the Contract Documents nor any partial or entire occupancy of the premises by the OWNER shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the CONTRACTOR of liability in respect to any express warranties or responsibility for faulty workmanship or materials. The CONTRACTOR shall remedy any defects in the Work and pay for any damage to other Work resulting therefrom, which shall appear within a period of one (1) year from the date of final acceptance of the Work, unless a longer period is specified by the OWNER and/or by virtue of any specific product guarantees and/or warranties. The OWNER will give final notice of observed defects with reasonable promptness.

The CONTRACTOR shall furnish a bond or bonds to guarantee satisfactory operation of any item of equipment for one year or for any other time period consistent with any specific product guarantees and/or warranties as referenced within the Technical Specifications, from date of final acceptance, if required by the Engineer.

#### ARTICLE 26: COMPLETENESS OF THE WORK

In addition to the specified or described portions of the Work, all other Work and all other materials, equipment, and labor of whatever description, necessary or required to complete the Work, or for carrying out the full intent of the drawings and Specifications, such Work, labor, materials, and equipment shall be provided by the CONTRACTOR, and payment therefore shall be considered as having been included in the price stipulated for the appropriate item of Work listed in the bid.

#### ARTICLE 27: CARE OF THE WORK

The CONTRACTOR shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the Work and shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the OWNER, whether or not the same has been covered by partial payments made by the OWNER.

#### ARTICLE 28: PROTECTION OF CONSTRUCTION FEATURES

The CONTRACTOR shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property and such incidentals, and to avoid damage thereto. The CONTRACTOR shall completely repair any damage at no additional expense to the OWNER.

#### ARTICLE 29: SAFETY AND HEALTH REGULATIONS

These Contract Documents, and the joint and several phases of construction hereby contemplated, are to be governed, at all times, by the applicable provisions of the Federal law(s), including but not limited to the following:

1. Williams-Steiger Occupational Safety and Health Act, 1970, Public Law 92-596;
2. Part 1910 of the Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;
3. This Project is subject to all of the Safety and Health Regulations (CFR 29, Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974. CONTRACTORS are urged to become familiar with the requirements of these regulations.

In the event of any inconsistencies between the above laws and regulations and the provisions of these Contract Documents, the laws and regulations shall prevail.

#### ARTICLE 30: PROTECTION OF WORK AND PROPERTY - EMERGENCY

- a. The CONTRACTOR shall provide and maintain all necessary watchmen, barricades, lights and warning signs and take all necessary precautions for the protection of the public.
- b. The CONTRACTOR shall at all times safely guard the OWNER'S property as well as adjacent public and private property from injury or loss in connection with this Contract. He shall at all times safely guard and protect his own Work, materials incorporated into the Work or stockpiled at the site, and that of adjacent property, from damage. The CONTRACTOR shall replace or make good any such damage, loss or injury.
- c. In case of an emergency which threatens loss or injury of property, and/or safety of life, the CONTRACTOR will be allowed to act, without previous instructions from the OWNER, in a diligent manner. He shall notify the OWNER immediately thereafter. Any claim for compensation by the CONTRACTOR due to such extra Work shall be promptly submitted to the OWNER for review.
- d. Where the CONTRACTOR has not taken action but has notified the OWNER of an emergency threatening injury to persons or damage to the Work or to any adjoining property, he shall act as instructed or authorized by the OWNER.
- e. The amount of reimbursement claimed by the CONTRACTOR on account of any emergency action shall be determined in the manner provided elsewhere in the Contract Documents.
- f. The CONTRACTOR shall remove all snow and ice as may be required for the proper protection and prosecution of the work.
- g. Bracing, shoring, sheathing, caissons and/or any other underground facilities shall be provided as required for safety and proper execution of the work, and shall be

removed when no longer necessary.

#### ARTICLE 31: FIRE PREVENTION AND PROTECTION

All State and municipal rules and regulations with respect to fire prevention, fire-resistant construction, and fire protection shall be strictly adhered to on all Work and facilities necessary therefor shall be provided and maintained by the CONTRACTOR in an approved manner.

All fire protection equipment such as water tanks, hoses, pumps, extinguishers and other materials and apparatus, shall be provided for the protection of the Contract Work, temporary Work, and adjacent property. Trained personnel experienced in the operation of all fire protection equipment and apparatus shall be available on the site whenever Work is in progress, and at such other times as may be necessary for the safety of the public and the Work.

#### ARTICLE 32: PROTECTION OF LIVES AND HEALTH

- a. In order to protect the lives and health of his employees under this Contract, the CONTRACTOR shall meet all pertinent provisions of the "Manual of Accident Prevention in Construction," issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational diseases, and injuries requiring medical attention or causing loss of time of employment on the Contract Work.
- b. The CONTRACTOR alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance or operation.

#### ARTICLE 33: PROTECTION AGAINST HIGH WATER AND STORM

The CONTRACTOR shall take all precautions to prevent damage to Work or equipment by high water or by storms. The OWNER may prohibit the carrying out of Work at any time when in his judgment high waters or storm conditions are unfavorable or unsuitable, or at any time regardless of the weather when proper precautions are not being taken to safeguard previously constructed Work or Work in progress.

In case of damage caused by the failure of the CONTRACTOR to take adequate precautions, the CONTRACTOR shall repair or replace equipment damaged and shall make such repairs or rebuild such parts of the damaged Work as the OWNER may require, at no additional cost to the OWNER.

#### ARTICLE 34: FIRST AID TO INJURED

The CONTRACTOR shall keep in his office, ready for immediate use, all articles necessary for giving first aid to injured employees. He shall also provide arrangements for the immediate removal and hospital treatment of any employees injured on the Work

site, who require same.

#### ARTICLE 35: HURRICANE PROTECTION

Should hurricane warnings be issued, the CONTRACTOR shall take every precaution to minimize danger to persons, to the Work, and to adjacent property. These precautions shall include closing all openings, removing all loose materials, tools and equipment from exposed locations, and removing all scaffolding and other temporary Work.

#### ARTICLE 36: USE OF PREMISES AND REMOVAL OF DEBRIS

The CONTRACTOR undertakes, at his own expense:

- a. To take every precaution against injuries to persons or damage to property.
- b. To store his apparatus, materials, equipment and supplies in such orderly fashion at the site of the Work, as will not unduly interfere with the progress of his Work or any others.
- c. To place upon the Work or any part thereof, only such loads as are consistent with the safety of that portion of the Work.
- d. To clean frequently all refuse, scrap, and debris caused by his operations, so that the Work site is maintained in a neat, workmanlike appearance.
- e. To effect all cutting, fitting, or patching of his Work required to make the same conform to the drawings and Specifications, and except with the consent of the OWNER, not to cut or otherwise alter the Work of any other contractor.
- f. Before final payment, to remove all surplus materials, false Work, temporary structures, including foundations thereof, plants of any description, and debris of any nature resulting from his operations, so that the site is left in a neat, orderly, and workmanlike condition.

#### ARTICLE 37: CORRECTION OF WORK

All Work, materials, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the OWNER, who shall be the final judge of the quality and suitability of the Work performed under this Contract. Should any of the Work performed fail to meet with his approval, it shall be forthwith reconstructed, made good, replaced, and/or corrected as the case may be, by the CONTRACTOR, at his own expense. Rejected material shall be immediately removed from the site. If, in the opinion of the OWNER, it is undesirable to replace, reconstruct, or correct any of the Work not performed in accordance with the Contract Documents, the compensation to be paid to the CONTRACTOR shall be reduced by such amounts as



in the judgment of the OWNER shall be equitable.

#### ARTICLE 38: FAILURE TO REPAIR

Any emergency rising from the interruption of electric, gas, water, storm drainage, transportation routes (roads), or sewer service due to the activities of the CONTRACTOR shall be repaired by the CONTRACTOR as quickly as is possible.

If and when, in the opinion of the OWNER, the CONTRACTOR is not initiating repair Work as expeditiously as possible upon notification to do so, the OWNER, may, at his own option, make the necessary repairs using his own forces or those of others. The cost of such repairs shall be subtracted from the payments due to the CONTRACTOR.

#### ARTICLE 39: WEATHER CONDITIONS

In the event of temporary suspension of the Work, or during inclement weather, or whenever the OWNER shall direct, the Contractor shall, and shall cause his subcontractors to, protect carefully his and their Work and materials against damage or injury from the weather. If, in the opinion of the OWNER, any Work or materials are damaged or injured by reason of failure to protect them on the part of the CONTRACTOR, or any of his subcontractors, or otherwise damaged or injured by the CONTRACTOR'S negligence, or are found to be defective, such materials or Work shall be removed and replaced at the expense of the CONTRACTOR. The OWNER may determine when conditions are unfavorable for Work and may order the Work, or any portion thereof, suspended whenever, in his opinion, the conditions are not such as will insure first-class Work.

#### ARTICLE 40: BUS LINE INTERFERENCE

Whenever it may be necessary to interfere with any bus lines, notice shall be given to the corporation owning the same, and reasonable time will be given to said corporation to arrange the schedule for operation of the bus line, as it may be necessary.

#### ARTICLE 41: AFTER HOURS WORK

Night work, or Work on Saturdays, Sundays, or legal holidays requiring the presence of an engineer or inspector, will not be permitted except in case of emergency, and only upon the approval of the OWNER. Should it be necessary for the OWNER to operate an organization for continuous night work or for emergency night work, the lighting, safety and other facilities which are deemed necessary shall be provided by the CONTRACTOR. Compensation for this Work shall be considered as having been included in the prices stipulated for the appropriate items of Work as listed in the bid, and no extra compensation will be paid by the OWNER.

#### ARTICLE 42: LIGHTS, BARRIERS, WATCHMEN, AND INDEMNITY

The CONTRACTOR shall erect and maintain such barriers, lighting, warning lights, danger warning signals, and signs that will prevent accidents during the construction Work and protect the Work and insure the safety of personnel and the public at all times and places; the CONTRACTOR shall indemnify and protect the OWNER and Engineer in every respect from injury or damage whatsoever caused by any act of neglect by the CONTRACTOR or his subcontractors, or their servants or agents.

In addition to the above, when and as necessary, or when required by the OWNER, the CONTRACTOR shall post signs and employ watchmen or flagmen, for the direction of traffic at the site and for excluding at all times unauthorized persons from the Work site, for which the CONTRACTOR shall be paid no additional compensation.

The CONTRACTOR shall be responsible for excluding at all times from the land within the easement areas, all persons not directly connected with the Work.

All Work occurring on State of Rhode Island highways shall be clearly identified, protected, and the public's safety ensured by erection of signs, barriers, and all other provisions as outlined in the Manual on Uniform Traffic Control Devices for Streets and Highways; issued by the U.S. Department of Transportation, Federal Highway Administration, 1978; Part VI, "Traffic Controls for Streets and Highway Construction and Maintenance Operations", as amended.

#### ARTICLE 43: LOADING

No part of the structures involved in this Contract shall be loaded during construction with a load greater than it is calculated to carry with safety. Should any accidents or damage occur through any violation of this requirement, the CONTRACTOR will be held responsible under his Contract and bond.

#### ARTICLE 44: DISPOSAL OF MATERIALS

The materials used in the construction of the Work, shall be deposited in such manner so they will not endanger persons or the Work, and so that free access may be had at any time to all hydrants, valves, manholes, etc. in the vicinity of the Work. The materials shall be kept trimmed up so that as little inconvenience as possible to the public or adjoining tenants is caused.

#### ARTICLE 45: FINISHING AND CLEANING UP

In completing his operations, the CONTRACTOR shall immediately remove all surplus material, tools, and other property belonging to him, leaving the entire street or surroundings free and clean and in good order, at no additional expense to the OWNER. The CONTRACTOR shall exercise special care in keeping the rights-of-way and private lands upon which Work is performed free and clean of all debris, and shall remove all tools and other property when they are not in use.

In case the CONTRACTOR fails or neglects to promptly remove all surplus materials,

tools, and incidentals after backfilling, leaving the street or surrounding area clean and free of debris, and do the required repaving when ordered, the OWNER may, after 24 hours' notice, cause the Work to be done and the cost thereof deducted from any payment due to the CONTRACTOR.

#### ARTICLE 46: SPIRITUOUS LIQUORS

The CONTRACTOR shall neither permit or suffer the introduction of spirituous liquors upon the Work embraced in this Contract, nor the use of the same.

#### ARTICLE 47: DUST CONTROL

The CONTRACTOR shall exercise every precaution and means to prevent and control dust arising out of all construction operations from becoming a nuisance to abutting property OWNERS or surrounding neighborhoods. Pavements adjoining the pipe trench shall be kept broomed off and washed clean of excess materials wherever and whenever directed. Repeated daily dust control treatment shall be provided to satisfactorily prevent the spread of dust until permanent pavement repairs are made and until earth stockpiles have been removed, and all construction operations that might cause dust have been completed. No extra payment will be made for these dust control measures, compensation shall be considered to be included in the prices stipulated for the appropriate items as listed in the bid.

If so directed by the OWNER, the CONTRACTOR shall furnish and apply calcium chloride for supplemental control of dust.

Calcium chloride shall conform to the requirements of AASHTO M.144 (ASTM D-98) except that the pellet form and the flake form shall be equally acceptable.

Calcium chloride shall be applied only at the locations, at such times and in the amount as may be directed by the OWNER. It shall be spread in such manner and by such devices that uniform distribution is attained over the entire area on which it is ordered placed.

There will be no separate payment for this Work. The cost of the Work shall be included in the price bid for the various other items of Work.

### **PART III**

The rights and obligations of the OWNER under this Contract shall include, but not be limited to the following:

#### **ARTICLE 48: THE OWNER'S AUTHORITY**

The OWNER shall give all orders and directions contemplated under this Contract and Specifications relative to the execution of the Work. The OWNER shall determine the amount, quality, acceptability, and fitness of the several kinds of Work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said Work and the construction thereof. The OWNER'S estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said Contract or Specifications, the determination or decision of the OWNER shall be a condition precedent to the right of the CONTRACTOR to receive any money or payment for Work under this Contract affected by such questions.

The OWNER shall decide the meaning and intent of any portion of the Specifications and of any plans or drawings where the same may be found to be obscure or be in dispute. Any differences or conflicts in regard to their Work which may arise between the CONTRACTOR and other contractors performing Work for the OWNER, shall be adjusted and determined by the OWNER.

#### **ARTICLE 49: ALL WORK SUBJECT TO CONTROL BY THE OWNER**

- a. In the performance of the Work, the CONTRACTOR shall abide by all orders, directions, and requirements of the OWNER, and shall perform all Work to the satisfaction of the OWNER, and at such times and places, by such methods, and in such manner and sequence as he may require. The OWNER shall determine the amounts, quality, acceptability, and fitness of all parts of the Work. The OWNER shall interpret the drawings, Specifications, contract documents, all other documents, and the extra Work orders. The OWNER shall also decide all other questions in connection with the Work. The CONTRACTOR shall employ no plant, equipment, materials, methods or men to which the OWNER objects and shall remove no plant, materials, or equipment, or other facilities from the Work site without the OWNER'S permission. Upon request, the OWNER will confirm in writing any oral order, direction, requirement, or determination.
- b. Inspectors shall be authorized to inspect all Work done and materials furnished. Such inspection may extend to all parts of the Work and to the preparation or manufacture of the materials to be used. The presence or absence of an inspector shall not relieve the CONTRACTOR from any requirements of the Contract. In case of any dispute arising between the CONTRACTOR and the inspector as to materials furnished or the manner in which the Work is being executed, the inspector shall have the authority to reject material, and suspend Work until the

question has been decided by the OWNER. The inspector shall not be authorized to revoke, alter, enlarge, relax, or release any requirement of these Specifications, nor to approve or accept any portion of the Work, nor to issue instructions contrary to the drawings and Specifications. The inspector shall in no case act as foreman or perform other duties for the CONTRACTOR, or interfere with the management of the Work by the latter. Any advice which the inspector may give the CONTRACTOR shall in no way be construed as binding the OWNER or the Engineers in any way, nor releasing the CONTRACTOR from the fulfillment of the terms of the Contract.

#### ARTICLE 50: THE OWNER'S CONTROL NOT LIMITED

The enumeration in this Contract of particular instances in which the opinion, judgment, discretion, or determination of the OWNER shall control or in which Work shall be performed to his satisfaction or subject to his approval or inspection, shall not imply that only matters similar to those enumerated shall be so governed and performed, but without exception all the Work shall be so governed and performed.

#### ARTICLE 51: RIGHT OF THE OWNER TO TERMINATE THE CONTRACT

In the event that any of the provisions of this Contract are violated by the CONTRACTOR, or any of his subcontractors, the OWNER may serve written notice upon the CONTRACTOR and the Surety of his intention to terminate the Contract, such notice to contain the reasons for such intention to terminate the Contract. If within ten (10) days such violation or delay shall not cease, and satisfactory arrangement or correction made, the Contract shall, at the expiration of the ten (10) days, cease and immediately serve notice thereof upon the Surety and the CONTRACTOR, and the Surety shall have the power to take over and perform the Contract; provided, however, that if the Surety does not commence performing thereof within ten (10) days from the date of mailing to such Surety a Notice Of Termination, the OWNER may take over the Work and prosecute the same to completion by Contract or force account at the expense of the CONTRACTOR, and the CONTRACTOR and his Surety shall be liable to the OWNER for any excess cost occasioned the OWNER thereby.

If the CONTRACTOR should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extensions of time are provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payments to Subcontractors or for material or labor, or persistently disregard laws, or ordinances or the instructions of the Engineer, or otherwise be guilty of a substantial violation of any provision of the Contract, then the OWNER, upon the written notice of the Engineer that sufficient cause exists to justify such action may, without prejudice to any other right to remedy and after giving the CONTRACTOR ten (10) days written notice, terminate the employment of the CONTRACTOR and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may

deem expedient.

In such case, the CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the CONTRACTOR. If such expense shall exceed such unpaid balance, the CONTRACTOR shall pay the difference to the OWNER. The expense incurred by the OWNER herein provided, and the damage incurred through the CONTRACTOR's default, shall be determined by the Engineer.

Where the Contract has been terminated by the OWNER, said termination shall not affect or terminate any of the rights of the OWNER as against the CONTRACTOR of his surety then existing or which may thereafter accrue because of such default.

In the case of termination of this Contract before completion, for any cause whatever, the CONTRACTOR, if notified to do so by the OWNER, shall promptly remove any part or all of his equipment or supplies from the property of the OWNER, failing which the OWNER shall have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

#### ARTICLE 52: TERMINATION FOR CONVENIENCE

- a. The performance of Work under this Contract may be terminated by the OWNER in accordance with this clause in whole, or from time to time in part, whenever the OWNER shall determine that such termination shall be effected by delivery to the CONTRACTOR of a Notice Of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.
- b. After receipt of a Notice Of Termination, and except as otherwise directed by the OWNER, the CONTRACTOR shall:
  1. Stop Work under the Contract on the date and to the extent specified in the Notice Of Termination;
  2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
  3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice Of Termination;
  4. Assign to the OWNER in the manner, at the times, and to the extent directed by the OWNER, all of the rights, title and interest of the CONTRACTOR under the orders and subcontracts so terminated. In

which case, the OWNER shall have the right, in its discretion, to settle, or pay any or all claims arising out of the termination of such orders and subcontracts;

5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the OWNER to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
  6. Transfer title to the OWNER, and deliver in the manner, at the times, and to the extent, if any, directed by the OWNER, (i) the fabricated or unfabricated parts, Work in progress, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of the Work terminated by the Notice Of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the OWNER;
  7. Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the OWNER, any property of the types referred to in (6) above; provided however, that the CONTRACTOR (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the OWNER: and, provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the OWNER or the CONTRACTOR under this Contract, or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in other such manner as the OWNER may direct;
  8. Complete performance of such part of the Work as shall not have been terminated by the Notice Of Termination; and,
  9. Take such action as may be necessary, or as the OWNER may direct, for the protection and preservation of the property related to this Contract which is in the possession of the CONTRACTOR and which the OWNER has or may acquire an interest.
- c. After receipt of a Notice Of Termination, the CONTRACTOR shall submit to the OWNER his termination claim, in the form and with the certification prescribed by the OWNER. Such claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the OWNER upon request of the CONTRACTOR made in writing within such one-year period or authorized extension thereof. However, if the OWNER determines that the facts justify such action, he may receive and act upon any such termination claim at any time after

- such one-year period or extension thereof. Upon failure of the CONTRACTOR to submit his termination claim within the time allowed, the OWNER may determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall thereupon pay to the CONTRACTOR the amount so determined.
- d. Subject to the provisions of paragraph (c), the CONTRACTOR and the OWNER may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of Work pursuant to this clause which amount or amounts may include a reasonable allowance for profit on Work done: provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price or Work not terminated. The Contract shall be amended accordingly, and the Contract shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the CONTRACTOR in the event of failure of the CONTRACTOR and the OWNER to agree upon the whole amount to be paid to the CONTRACTOR by reason of the termination of Work pursuant to this paragraph (d).
- e. In the event of failure of the CONTRACTOR and the OWNER to agree as provided in paragraph (d) upon the whole amount to be paid to the Contract by reason of the termination of Work pursuant to this clause, the OWNER shall determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR; the amounts determined as follows:
1. With respect to all Contract Work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
    - i. The cost of such Work;
    - ii. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders provided in paragraph (b)(5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered, or services furnished by the subcontractor prior to the effective date of the Notice Of Termination of Work under this Contract, which amounts shall be included in the cost on account of which payment is made under (i) above, and;
    - iii. A sum, as profit on (i) above, determined by the OWNER to be fair and reasonable: provided; however, that if it appears that the CONTRACTOR would have sustained loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made



reducing the amount of the settlement to reflect the indicated rate of loss; and,

2. The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b)(9); and any other reasonable cost incidental to termination of Work under this Contract, including expense incidental to the determination of the amount due to the CONTRACTOR as the result of the termination of Work under this Contract.

The total sum to be paid to the CONTRACTOR under (1) above shall not exceed the total Contract Price as reduced by the amount of payments otherwise made, and as further reduced by the Contract Price of Work not terminated. Except for normal spoilage, and except to the extent that the OWNER shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the CONTRACTOR under (1) above, the fair value, as determined by the OWNER, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the OWNER, or to a buyer pursuant to paragraph (b)(7).

- f. The CONTRACTOR shall have the right to dispute under the clause of this Contract entitled "Remedies" from any determination made by the OWNER under paragraph (c) or (e) above, except that, if the CONTRACTOR has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such item, he shall have no such right of appeal. In any case, where the OWNER has made a determination of the amount due under paragraph (c) or (e) above, the OWNER shall pay to the CONTRACTOR the following: (1) if there is no right of appeal hereunder, or if no timely appeal has been taken, the amount so determined by the OWNER, or (2) if a "Remedies" proceeding is initiated, the amount finally determined in such "Remedies" proceeding.
- g. In arriving at the amount due the CONTRACTOR under this clause, there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to the CONTRACTOR, applicable to the terminated portion of this contract, (2) any claim which the OWNER may have against the CONTRACTOR in connection with this Contract, and (3) the agreed price for, or the proceeds of sale of any materials, supplies, or other things kept by the CONTRACTOR or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited by the OWNER.
- h. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Contract, the CONTRACTOR may file with the OWNER a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice Of Termination) and such equitable adjustment as may be agreed upon shall be made in such price or prices; however, nothing contained herein shall limit the right of the OWNER and amounts to be paid to the

CONTRACTOR for the completion of the continued portion of the Contract, when said Contract does not contain an established contract price for such continued portion.

#### ARTICLE 53: RIGHTS OF ACCESS

Nothing herein contained or shown on the drawings shall be construed as giving the CONTRACTOR exclusive occupancy of the Work area. The OWNER or any other contractors employed by him, the various utility companies, contractors, or subcontractors employed by State or Federal agencies, or any other agencies involved in the general Project or upon public rights-of-way, may enter upon or cross the area of Work or occupy portions of the area as is directed or necessary. When the territory of one contract is the convenient means of access to the other, the CONTRACTOR shall arrange his Work in such a manner as to permit such access to the other and prevent unnecessary delay to the Work as a whole.

#### ARTICLE 54: RIGHTS-OF-WAY AND SUSPENSION OF WORK

Land and rights-of-way for the purpose of this Contract shall be furnished by the OWNER to the extent shown on the drawings; the OWNER will use due diligence in acquiring said lands and rights-of-way as speedily as possible. If, however, lands or rights-of-way cannot be obtained before Work on the Project begins, the CONTRACTOR shall begin his Work upon such land or rights-of-way as have been previously acquired by the OWNER, and no claims for damages whatsoever will be allowed by reason of the delay in obtaining the remaining land and rights-of-way. Should the OWNER be prevented or enjoined from proceeding with the Work, or from authorizing its prosecution, either before or after the commencement by reason of litigation, or by reason or its inability to procure the land or rights-of-way for the said Work, the CONTRACTOR shall not be entitled to make or assert a claim for damages by reason of the said delay, or to withdraw from the Contract except by consent of the OWNER. Time for completion of Work will be extended to such time as the OWNER determines will compensate for the time lost by such delay, such determination to be set forth in writing.

#### ARTICLE 55: CONFORMANCE WITH DIRECTIONS

The OWNER may make alterations in the line, grade, plan, form, dimension, or materials of the Work, or any part thereof, either before or after the commencement of construction. Should such alterations diminish the quantity included in any item or Work to be done and paid for at a unit price, the CONTRACTOR shall have no claim for damages or for anticipated profits on the Work that thus may be dispensed with. If they increase the quantity included in any such item, such increase shall be paid for at the stipulated prices.

#### ARTICLE 56: INTERPRETATION OF THE DRAWINGS AND SPECIFICATIONS

Except for the CONTRACTOR'S executed set, all drawings and Specifications are the

property of the OWNER. The OWNER will furnish the CONTRACTOR, without charge, three (3) sets of the drawings and Specifications. Additional sets will be furnished upon request, at actual cost of reproduction. Such drawings and Specifications are not to be used on other Work and those sets in usable condition shall be returned to the OWNER upon request at the completion of cessation of the Work or termination of the Contract.

The CONTRACTOR shall keep one (1) copy of the drawings and Specifications at the Work site at all times and shall give the OWNER and their representatives access thereto. Anything on the drawings and not mentioned in the Specifications, or anything in the Specifications that is not shown on the drawings shall have the same force and effect as if mentioned in both. In case of conflict or inconsistency between the drawings and the Specifications, the Specifications shall take precedence. Any discrepancy in the figures and the drawings shall be immediately submitted to the OWNER for decision and the decision of the OWNER shall be final. In case of differences between small and large scale drawings, the large scale drawings shall take precedence.

#### ARTICLE 57: SUSPENSION OF WORK

- a. The OWNER may order the CONTRACTOR in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the OWNER.
- b. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the OWNER in administration of this Contract, or by his failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly.

However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

- c. No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the CONTRACTOR shall have notified the OWNER in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Contract.

#### ARTICLE 58: INSPECTION

The authorized representatives and agents of the OWNER shall be permitted to inspect all Work materials, payroll, records of personnel, invoices for materials, and other relevant data and records.

The OWNER and Engineer and their representatives shall at all times have access to the work whenever it is in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the CONTRACTOR shall give the engineer timely notice of its readiness for inspection, and if the inspection is by another authority than the Engineer, of the date fixed for such inspection. Inspections by the Engineer shall be promptly made. If any work should be covered up without approval or consent of the Engineers it must, if required by the Engineer, be uncovered for examination and properly restored at the CONTRACTOR's expense.

## **PART IV**

### **ARTICLE 59: SUBCONTRACTORS**

The CONTRACTOR may utilize the services of specialty subcontractors on those parts of the Work which, under normal contracting practices, are performed by specialty subcontractor.

The CONTRACTOR shall not award Work to any subcontractor other than those listed in his bid, without the prior written approval of the OWNER, which approval will not be given until the CONTRACTOR submits a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the OWNER may require.

The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work, to bind the subcontractors to the Contract Documents insofar as applicable to the subcontractor Work and to give the CONTRACTOR the same power as regards to terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provisions of the Contract Documents.

Nothing contained in this Contract shall create any contractual relationship between the OWNER and any subcontractor.

### **ARTICLE 60: MUTUAL RESPONSIBILITY OF CONTRACTORS**

If, through acts of neglect on the part of the CONTRACTOR, any other contractor or any subcontractor shall suffer loss or damage to the Work, the CONTRACTOR agrees to settle with such other contractor or subcontractor by agreement or arbitration. If such other contractor or subcontractor shall assert any claim against the OWNER on account of any damage alleged to have been sustained, the OWNER shall notify the CONTRACTOR who shall indemnify and save harmless the OWNER against any such claim.

### **ARTICLE 61: ASSIGNMENTS**

The CONTRACTOR shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without the written consent of the OWNER. In case the CONTRACTOR assigns all or part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the CONTRACTOR shall be subject to prior claims of all persons, firms, or corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

### **ARTICLE 62: SEPARATE CONTRACTS**

The OWNER reserves the right to let other contracts in connection with the construction of the contemplated Work of the Project, or continuous Projects of the OWNER. The CONTRACTOR, therefore, will afford to any such other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, will properly connect and coordinate his Work with theirs, and will not commit or permit any act which will interfere with the performance of their Work.

The CONTRACTOR shall coordinate his operations with those of other contractors. Cooperation will be required in the arrangement for storage of materials and in the detailed execution of the Work. Failure by the CONTRACTOR to keep informed on the progress of defective workmanship by others, shall be construed as acceptance by him of the status of the Work as being satisfactory for proper coordination with and performance of his own Work.

#### ARTICLE 63: WORK BY OTHERS

The OWNER reserves the right to do any other Work which may be connected with, or become a part of, or be adjacent to the Work embraced by this Contract, at any time, by Contract or otherwise. The CONTRACTOR shall not interfere with the Work of such others as the OWNER may employ, and shall execute his own Work in such a manner as to aid in the execution of the Work of others as may be required. No backfilling of trenches or excavations will be permitted until such Work by the OWNER is completed.

## **PART V**

### **ARTICLE 64: WAGE UNDERPAYMENT AND ADJUSTMENTS**

The CONTRACTOR agrees that in case of underpayment of wages to any worker on the Project under this Contract by the CONTRACTOR or any of his subcontractors, the OWNER will withhold from the CONTRACTOR out of payments due to him, an amount sufficient to pay such worker the difference between the wages required to be paid under this Contract and the wages actually paid such worker for the total number of hours worked, and that the OWNER may disburse such amount so withheld by it for and on account of the CONTRACTOR to the employee to whom such amount is due. The CONTRACTOR further agrees that the amount withheld pursuant to this article may be in addition to the percentage to be retained by the OWNER pursuant to other provisions of this Contract.

### **ARTICLE 65: PAYMENT OF EMPLOYEES**

The CONTRACTOR and each of his subcontractors shall pay each of their employees engaged in the Work on the Project under this Contract in full, in cash, and not less than once a week, less legally required reductions, provided, that when circumstances render payment in cash unfeasible or impracticable, then payment by check may be effected upon consideration that funds are made available in a local bank and checks may be cashed without charge, trade requirements, or inconvenience to the worker.

### **ARTICLE 66: NON-DISCRIMINATION IN EMPLOYMENT**

In connection with the performance of the Work under this Contract, the CONTRACTOR agrees not to discriminate against employee because of race, religion, color, or national origin. The aforesaid provisions shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship.

### **ARTICLE 67: APPRENTICES**

Apprentices shall be permitted to Work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, United State Department of Labor; or if no such Council exists in a State, under a program registered with the Bureau of Apprenticeship, United State Department of Labor.

## **PART VI**

### **ARTICLE 68: SHOP OR SETTING DRAWINGS**

- a. The CONTRACTOR shall submit promptly to the OWNER six (6) copies of each shop or setting drawing prepared in accordance with a schedule predetermined by the CONTRACTOR. After examination of such drawings by the OWNER, and the return thereof, if resubmission is required, the CONTRACTOR shall make such corrections to the drawings as have been indicated and shall furnish the OWNER with six (6) corrected copies. Regardless of corrections made in or approval given to such drawings by the OWNER, the CONTRACTOR will, nevertheless, be responsible for the accuracy of such drawings and for their conformity to the drawings and Specifications, unless he notifies the OWNER in writing of any deviations at the time he furnishes the drawings.
- b. Shop drawings of all fabricated Work shall be submitted to the OWNER for approval and no Work shall be fabricated by the CONTRACTOR save at his own risk until approval has been given by the OWNER. The Special Conditions define the shop drawings required for this Project.
- c. The CONTRACTOR shall submit all shop and setting drawings on dates sufficiently in advance of requirements to enable the OWNER ample time for reviewing the same, including time for correcting, resubmission and reviewing, if necessary, and no claim for delay will be granted the CONTRACTOR by reason of his failure in this respect.
- d. All shop drawings submitted must bear the stamp of the CONTRACTOR as evidence that the drawings have been checked by him. Any drawings submitted without this stamp of approval will not be considered and will be returned to the CONTRACTOR for resubmissions. If the shop drawings show deviations from the requirements of the Contract Documents because of standard shop practice or other reason, the CONTRACTOR shall make specific mention of such variation in his letter of transmittal to the OWNER, in order that an acceptable, suitable action may be taken for proper adjustment; otherwise the CONTRACTOR will not be relieved of the responsibility for executing the Work in accordance with the Contract Documents even though the shop drawings have been approved.
- e. Where shop drawings are submitted by the CONTRACTOR that indicate a departure from the Contract which the OWNER deems to be a minor adjustment in his interest and not involving a change in the Contract Price or extension of time, the OWNER may approve the drawings but the approval will contain in substance, the following:

"The modification shown on the attached drawings is approved in the interest of the OWNER to effect an improvement for the Project and is ordered with the understanding that it does not involve any change in the



Contract Price or an extension of time, that it is subject generally to all Contract stipulations and covenants; and that it is without prejudice to any rights of the OWNER under the Contract and bond or bonds."

- f. The approval of the shop drawings will be general and shall not relieve the CONTRACTOR from the responsibility for adherence to the Contract, for any error which may exist.
- g. The CONTRACTOR agrees to hold the Engineer and the OWNER harmless and defend them against damages or claims for damages arising out of injury to others or property of third persons which result from errors on shop, working, or setting drawings whether or not they have been approved by the Engineer and/or the OWNER.

ARTICLE 69: WORK TO BE ACCOMPLISHED IN ACCORDANCE WITH THE  
DRAWINGS AND SPECIFICATIONS

The Work, during its progress and at its completion, shall conform to the lines and grades shown on the drawings and to the directions given by the OWNER from time to time, subject to such modifications or additions as he shall determine to be necessary during execution of the Work; and in no case will any Work be paid for in excess of such requirements. The Work shall also be accomplished in accordance with the data in these Specifications.

ARTICLE 70: CONTRACTOR TO CHECK DIMENSIONS AND SCHEDULES

The CONTRACTOR will be required to check all dimensions and quantities shown on the drawings or schedules given to him by the OWNER, and shall notify the OWNER of all errors therein which he may discover by examining and checking the same. The CONTRACTOR shall not take advantage of any error or omissions in furnishing all instructions, should such error or omissions be discovered, and the CONTRACTOR shall carry out such instructions as if originally specified.

ARTICLE 71: ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The CONTRACTOR will be furnished additional instructions and detail drawings as necessary to carry out the Work included in the Contract. The additional drawings and instruction thus supplied to the CONTRACTOR will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The CONTRACTOR shall carry out the Work in accordance with the additional detail drawings and instructions. The CONTRACTOR and the OWNER will prepare jointly a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing, and installation of materials, supplies and equipment, and the completion of the various parts of the Work; each schedule to be subject to change from time to time in accordance with the progress of the Work.

## ARTICLE 72: MATERIALS, SERVICES, AND FACILITIES

It is understood that, except as otherwise specifically stated in the Contract Documents, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever, necessary to protect, execute, complete, and deliver the Work within the specified time.

The CONTRACTOR shall submit to the Engineer for approval material and apparatus included under this contract and as listed in detail under the respective items together with samples, tests of materials, documentary evidence or other information in such detail as may be necessary to permit the Engineer to determine whether the same comply with the specifications, and written approval shall be obtained prior to the incorporation of the material, apparatus or equipment in the work.

Where accepted Standard Specifications for materials or conduct of work are referred to in these specifications, such Standard Specifications shall be considered a part of these specifications the same as if repeated therein verbatim. In the specifications there are specified and shown certain equipment and materials deemed most suitable for the service anticipated. The awarding of the contract will constitute a contractual obligation to furnish the specified equipment and materials unless the CONTRACTOR desired to follow procedures.

After the execution of the contract, substitution of equipment of makes other than those named in the contract will be considered for two reasons only:

- A. That the equipment proposed for substitution is superior in the construction and/or efficiency to that named in the contract.
- B. That the equipment proposed for substitution is equal in construction and/or efficiency to that named in the contract.

In the event the CONTRACTOR obtains the Engineer's approval on equipment other than that for which the plan was originally laid out, the contractor shall at his own expense make any changes in the structures, buildings or piping necessary to accommodate the equipment named in the contract and if the substitution is approved, the contract price shall be reduced by an amount equal to 75% of the savings, if any.

## ARTICLE 73: CONTRACTOR'S TITLE TO MATERIALS

No material, supplies, or equipment for the Work shall be purchased by the CONTRACTOR or any subcontractor, subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The CONTRACTOR warrants good title to all

material, supplies, and equipment installed or incorporated in the Work and further warrants upon completion of all Work, to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by him, to the OWNER free from any claims, liens, or charges, or encumbrances and further agrees that neither he nor any person, firm, or corporation furnishing any material or labor or any Work covered by this Contract shall have the right to a lien upon the premises or any improvement or appurtenance thereon.

#### ARTICLE 74: INSPECTION AND TESTING OF MATERIALS

All materials and equipment used in the construction of the Project shall be new and of current manufacture. Testing will be done in accordance with accepted standards and as directed by the OWNER; the laboratory or inspection agency shall be selected by the OWNER. Except as specified elsewhere in these Specifications, the OWNER will pay for laboratory inspection.

All materials and workmanship shall be subject to inspection, examination, and testing by the OWNER at any and all times during manufacture and/or construction, to establish conformance with these Specifications and suitability for uses intended. Without additional charge, the CONTRACTOR shall furnish promptly all reasonable facilities, labor, and materials necessary to make tests so required safe and convenient. He shall also furnish mill, factory, or other such tests based on the Standards and Tentative Standards of the American Society for Testing materials as required by the OWNER.

#### ARTICLE 75: DEFECTIVE MATERIALS

No materials shall be laid or used which are known, or may be found to be in any way defective. Any materials found to be defective at the site of Work or upon installation shall be replaced by the CONTRACTOR at his own expense. Notice shall be given to the OWNER of any defective or imperfect material. Defective or unfit material found to have been laid, shall be removed and replaced by the CONTRACTOR with sound and unobjectionable material, without additional cost to the OWNER.

#### ARTICLE 76: PATENTS

- a. The CONTRACTOR shall hold and save the OWNER harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the Contract, including its use by the OWNER.
- b. License and/or royalty fees for the use of a process which is authorized by the OWNER must be reasonable, and paid to the holder of the patent, or his authorized agent, directly by the CONTRACTOR.
- c. If the CONTRACTOR uses any design, device or material covered by letters, patent, or copyright, he shall provide for such use by suitable agreement with the

OWNER or such patent or copyrighted design, device, or material.

- d. It is mutually agreed and understood that, without exception, the Contract Price shall include all royalties, license fees, or costs arising out of the use of such process, design, device, or materials, in any way involved in the Work. The CONTRACTOR and/or his Surety shall indemnify and save the Engineer and the OWNER harmless from all claims for infringement by reason of use of such patented material, device, or design in connection with the Work under this Contract, and shall indemnify the Engineer and the OWNER for any cost, expense, or damage which it may be obligated to pay for reason of such infringement at any time during the prosecution of the Work.

#### ARTICLE 77: "OR APPROVED EQUAL" CLAUSE

- a. Whenever a material of article required is specified or shown on the drawings by using the name of the proprietary product or of a particular manufacturer or vendor, any material or article which will perform adequately the duties imposed by the general design may be considered equal and satisfactory providing the material or article so proposed is of equal substance and function in the OWNER'S sole opinion. It shall not be purchased or installed without his written approval. In all cases, new material shall be used on the Project.
- b. If two (2) or more brands, makes of material, devices, or equipment are shown or specified, each should be regarded as the approved equal of the other. Any other brand, make or material, device or equipment, which, in the opinion of the OWNER or his authorized agent, is the recognized approved equal of that specified, considering quality, workmanship, and economy of operation, and is suitable for the purpose intended, may be accepted.
- c. If any other material or article is substituted for items shown or specified, the Project must result in a savings in the Contract Price and the CONTRACTOR shall submit evidence that the substitute product is equal. Upon approval of the substitute product, the OWNER will issue a deductive change order.
- d. If an equipment manufacturer must have a specified period of experience with his product, equipment which does not meet with the specified experience period may, at the option of the OWNER, be considered if the equipment supplier or manufacturer is willing to provide a bond or cash deposit for the duration of the specified time period which will guarantee replacement of that equipment in the event of failure.

### **PART VII**

#### ARTICLE 78: INSURANCE

The CONTRACTOR shall be responsible for maintaining insurance coverage in force for

the life of this Contract of the kind and adequate amounts to secure all of this obligations under this Contract and with insurance companies licensed to write such insurance in the State of Rhode Island and acceptable to the OWNER. The kinds and amounts of such insurance carried shall not be less than the kinds and amounts of insurance coverage designated in the Special Conditions, and the CONTRACTOR agrees that the stipulation therein of the kinds and minimum amounts of coverage or the acceptance by the OWNER of certificates indicating the kinds and limits of coverage shall in no way limit the liability of the CONTRACTOR to any such kinds and amounts of insurance coverage. All policies issued shall indemnify and save harmless the OWNER, the Engineer, and their agents or representatives from any and all claims for damages arising out of the Contract, to either persons or property.

Policies and certificates of all insurance shall be submitted to the OWNER by the CONTRACTOR in sextuplicate (6 copies) prior to preparation of the construction Contract. In the event that the form of any policy or amount or insurance company writing same is not satisfactory to the OWNER, the CONTRACTOR shall re-submit all required items to the OWNER prior to the signing of the Contract. This requirement to re-submit shall not automatically extend the time limit specified elsewhere in these documents for the submittal of required items. The CONTRACTOR shall not cause policies to be canceled or permit them to lapse, and all insurance policies shall include a clause to the effect that the policy shall not be subject to cancellation or a reduction in the required limits of liability amounts of insurance until notice has been sent by registered mail to the OWNER, stating when, not less than ten (10) days thereafter, such cancellation or reduction shall be effective. All certificates of insurance shall contain true transcripts from the policy, authenticated by the proper officer of the insurer evidencing in particular, those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date, and the above-mentioned notice of cancellation clause.

The CONTRACTOR shall be responsible for the provision of identical insurance coverage for all his subcontract operations and, in the event that the CONTRACTOR'S policies do not cover each and every subcontractor, certificates of insurance issued on policies by companies that are acceptable to the OWNER covering each and every subcontractor shall be filed under the OWNER in sextuplicate (6 copies) prior to the commencement of such subcontract operations. All insurance specified in this Contract shall be provided by the CONTRACTOR, at no additional expense to the OWNER.

## **PART VIII**

### **ARTICLE 79: COMPENSATION TO BE PAID TO THE CONTRACTOR**

- a. The OWNER will pay and the CONTRACTOR shall receive as full compensation for everything furnished and one by the CONTRACTOR under this Contract, the unit prices and lump sum prices set opposite the respective items in the accepted bid form herein contained, and payment for approved extra Work.

- The cost of all Work required not specifically included in any items herein mentioned, and also for all loss or damage arising out of the nature of the Work aforesaid or from the action of the elements, or from any unforeseen obstruction or difficulty encountered in the prosecution of the Work and for all risks of every description connected with the Work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the Work as herein specified, and for assuming all duties, and liabilities, herein required, and for well and faithfully completing the Work, and the whole thereof, as herein provided, shall be the responsibility of the CONTRACTOR.
- b. The amount of the Contract (accepted bid price/prices) listed in the bid is based on the estimated quantities and the unit and/or lump sum price as set forth in the bid. It is understood and agreed that the CONTRACTOR will accept as payment the actual measured quantities at the unit and/or lump sum price as set forth in the accepted bid.
  - c. The estimated quantities given in the bid proposal for the various items of Work are given for the purpose of comparing the bids offered for the Work under this Contract and if it is found in the performance of the Contract Work that any or all of the said estimated quantities are not even approximately correct, the CONTRACTOR shall have no claim for anticipated profits, or for loss of profit, or for increase in prices as listed in the accepted bid because of the difference between the quantities of the various items of Work actually done and the estimated quantities stated in the accepted bid.
  - d. No payment or compensation will be made to the CONTRACTOR for damages because of hindrance or delay from any cause in the progress of the Work, whether such hindrances or delays be avoidable or unavoidable.

#### ARTICLE 80: PAYMENTS TO CONTRACTOR

- a. At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR shall submit to the OWNER a partial payment estimate filled out and signed by the CONTRACTOR covering the Work performed during the period covered by the partial payment estimate and supported by such data as the OWNER may reasonably require. If payment is requested with the OWNER'S permission of the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at or near the site, in accordance with the manufacturer's recommendation and as required by the OWNER, the partial payment estimate shall also be accompanied by such supporting data satisfactory to the OWNER, as will establish the OWNER'S title to the material and equipment applicable insurance. The OWNER will within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval, or return the partial payment estimate to the CONTRACTOR

- indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will within thirty (30) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment, plus any additional percent which is specified in these documents.
- b. The retainage shall remain at ten percent (10%) until sixty-five percent (65%) of the Contract is complete. At that time, if the OWNER decides the CONTRACTOR is making adequate progress, the OWNER may reduce retainage to five percent (5%). Any further reduction will be at the OWNER's discretion. At no time shall retainage be reduced below two percent (2%), until completion of the one-year General Guarantee period.
  - c. With each partial payment estimate, the CONTRACTOR shall certify in writing that the Project As-Built Drawings are being maintained accurately and currently. Said certificate shall be signed by the CONTRACTOR'S Superintendent and the CONTRACTOR'S Engineer or Surveyor. Any payment estimate not having said certification attached will be subject to refusal of payment.
  - d. Prior to substantial completion, the OWNER, with the approval and concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the Work. Such use shall not constitute an acceptance of such portion of the Work.
  - e. The OWNER shall have the right to enter the premises for the purpose of doing Work not covered by the Contract Documents. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the Work or the restoration of any damaged Work except such as may be caused by agents or employees of the OWNER.
  - f. Upon completion and acceptance of the Work, the OWNER shall issue a certificate attached to the final payment request that the Work has been accepted by him under the conditions of the Contract Documents. The entire balance found to be due the CONTRACTOR, less a two percent (2%) retainage plus other such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within forty-five (45) days of completion and acceptance of the Work. The two percent (2%) retainage shall be paid to the CONTRACTOR at the completion of the one-year General Guarantee period (see General Conditions, "Article 25: General Guarantee").
  - g. The CONTRACTOR will indemnify and save the OWNER or the OWNER'S representative harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the

furtherance of the performance of the Work. The CONTRACTOR shall at the OWNER'S request furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so, the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed in accordance with the terms of the Contract Documents. This shall not be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the Contract Documents by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

#### ARTICLE 81: CHANGE ORDERS

- a. The OWNER may, at any time, without notice of the sureties, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of this Contract, including but not limited to changes:
  1. In the Specifications (including drawings and design);
  2. In the method or manner of performance of the Work;
  3. In the OWNER-furnished facilities, equipments, materials, services or site; or
  4. Directing acceleration in the performance of the Work.
- b. Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation or determination) from the OWNER, which causes any such change, shall be treated as a Change Order under this clause, provided that the CONTRACTOR gives the OWNER written notice stating the date, circumstances, and source of the order and that the CONTRACTOR regards the order as a Change Order.
- c. Except as herein provided, no order, statement, or conduct of the OWNER shall be treated as a change under this clause or entitle the CONTRACTOR to an equitable adjustment hereunder.
- d. If any change, by Change Order, causes an increase or decrease in the CONTRACTOR'S cost of, or the time required for, the performance of any part of the Work under this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly: provided; however, that no claim for any Change Order (b) above shall be allowed for any costs incurred more than twenty (20) days before the CONTRACTOR gives written notice as therein required: and, provided further, that in case of defective Specifications for which the OWNER is responsible, the equitable adjustment shall include only increased



cost reasonably incurred by the CONTRACTOR in attempting to comply with such defective Specifications.

- e. If the CONTRACTOR intends to assert a claim for an equitable adjustment under this clause, he must, within thirty (30) days after receipt of a written Change Order under (a) above or the furnishing of a written notice under (b) above, submit to the OWNER a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the OWNER. The statement of claim hereunder may be included in the notice under (b) above.
- f. No claim by the CONTRACTOR for an equitable adjustment hereunder for any amount shall be allowed unless agreed to by Change Order prior to the Work being done.

#### ARTICLE 82: CHANGES IN THE WORK

No changes in the Work covered by the approved Contract Documents shall be made without having prior written approval of the OWNER. Charges or credits for the Work covered by the approved changes shall be determined by one or more, or a combination of the following methods as the OWNER shall direct:

- a. Unit price bid previously approved;
- b. The actual cost of: labor, materials, OWNERship or rental costs of construction plant and equipment during the use of item on the extra Work; power and consumable supplies for the operation of power and equipment;
- c. Insurance; and
- d. Social Security and Unemployment contributions.

To the cost of "b" above, there shall be added a fixed fee to be agreed upon but not to exceed ten (10) percent. The fee shall be compensation to cover the cost of supervision, overhead, bonds, profits, and any other general expenses.

If a subcontractor performs the Work, he shall be entitled to a maximum of 10% as a fixed fee, and the general CONTRACTOR shall be entitled to a maximum of 5% (of the cost of the subcontract work excluding subcontractor fixed fee) as a fixed fee.

#### ARTICLE 83: CLAIMS FOR EXTRA COST

No claims for extra Work or cost will be allowed unless the same were done in pursuance of a written order of the OWNER as aforesaid, and the claim presented with the first estimate after the changed or extra Work is done. When the Work is performed under terms specified elsewhere in the Contract, the CONTRACTOR shall furnish satisfactory bills, payrolls, and vouchers covering all items of cost and upon the OWNER'S request,

give him full access to the accounts relating thereto.

#### ARTICLE 84: CHANGES AND MODIFICATIONS

The OWNER reserves the right to delete or cancel any item or items or parts thereof as listed in the bid, without recourse by the CONTRACTOR. The OWNER also reserves the right to add to any item as listed in the bid. The compensation to be paid to the CONTRACTOR for such additional extensions, appurtenances, or items shall be made under the applicable items in the bid. If no applicable items are provided in the bid, the compensation to be paid the CONTRACTOR shall be set forth under the article entitled "Changes In The Work" as found herein.

#### ARTICLE 85: DEDUCTION FOR UNCORRECTED WORK

If the OWNER deems it inexpedient to correct work that has been damaged or that was not done in accordance with the CONTRACTOR, an equitable deduction from the Contract price shall be made therefore.

#### ARTICLE 86: CORRECTION OF WORK BEFORE FINAL PAYMENT

The contractor shall promptly remove from the premises all materials condemned by the OWNER as failing to meet Contract requirements, whether incorporated in the work or not, and the CONTRACTOR shall promptly replace and re-execute his work in accordance with the Contract and without expense to the OWNER and shall bear the expense of making good all work of other contractors destroyed by such removal or replacement.

If the CONTRACTOR does not remove such condemned work and materials as promptly as possible, after written notice, the OWNER may remove them and store the material at the expense of the CONTRACTOR.

#### ARTICLE 87: ACCEPTANCE OF THE FINAL PAYMENT CONSTITUTES RELEASE

The acceptance of the Final Payment by the CONTRACTOR shall be and shall operate as a release to the OWNER for all claims and all liability to the CONTRACTOR for all things done or furnished in connection with this Work and for every act or neglect of the OWNER and others relating to or arising out of this Work. No payment, however, final or otherwise, shall operate as a release of the CONTRACTOR or his Surety from any obligations under this Contract, the Performance Bond, or the Labor and Material Payment Bond.

#### ARTICLE 88: FEDERAL DRUG AND ALCOHOL TESTING PROGRAM

Any and all contractors/subcontractors performing work under this contract shall, where applicable, comply with the Federal Omnibus Transportation Employee Testing Act of

1991 (the “Act”), which requires controlled substance and alcohol testing of all employees that perform safety sensitive duties and/or functions, and/or who hold a Commercial Drivers License (CDL). To the extent allowable under the confidentiality provisions of the Act, the Town reserves the right to review the contractor’s/subcontractor’s testing programs for compliance.

## **Appendix A**

### **Water Storage Tanks Location Plans**



Project: Water System, Storage  
Tanks Inspection & Cleaning

Title: Location Plan,  
North End Tank

Scale: N.T.S.

Date: May 7, 2008

Town of Narragansett  
Engineering Department  
25 Fifth Avenue  
Narragansett, RI 02882  
Tel. 401-782-0637





Project: Water System, Storage  
Tanks Inspection & Cleaning

Title: Location Plan,  
Kinney Ave. Tank

Scale: N.T.S.

Date: May 7, 2008

Town of Narragansett  
Engineering Department  
25 Fifth Avenue  
Narragansett, RI 02882  
Tel. 401-782-0637





Project: Water System, Storage  
Tanks Inspection & Cleaning

Title: Location Plan,  
Point Judith Tank

Scale: N.T.S.

Date: May 7, 2008

Town of Narragansett  
Engineering Department  
25 Fifth Avenue  
Narragansett, RI 02882  
Tel. 401-782-0637